

## TENNESSEE REAL ESTATE COMMISSION MINUTES

**August 6, 2014**

The Tennessee Real Estate Commission convened on Wednesday, August 6, 2014 at 9:02 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume, and Commissioner Wendell Alexander, Commissioner Diane Hills, and Commissioner Marcia Franks. Absent from meeting was Commissioner Flitcroft. Others present: Executive Director Eve Maxwell, Assistant General Counsel Robyn Ryan, and Assistant General Counsel Julie Cropp, Administrative Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the Tennessee Real Estate Commission's website, included as part of this year's meeting calendar, since August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the Tennessee Real Estate Commission's website since Thursday July 31, 2014. Also, this meeting has been notice on the tn.gov website since Friday, August 1, 2014.

**Commissioner DiChiara made a motion to approve the August, 2014 agenda; seconded by Commissioner Franks. The motion carried.**

**Commissioner Collins made a motion to approve the July 2014 minutes; seconded by Commissioner DiChiara. Commissioner Franks abstained since she was not present at the July, 2014 meeting. The motion carried.**

The Commissioners welcomed new Commissioner Diane Hills, a real estate broker from Kingsport, TN.

### **INFORMAL APPLICANT APPEARANCE**

APPLICANT: BRETT A. BERNARD; PRINCIPAL BROKER: JOHN E. STAMPS #256233

John E. Stamps is the PB of The Stamps Real Estate Company LLC #261985 located in Collierville, TN. Mr. Bernard has completed an Application for Decision Regarding Prior Criminal Sanctions in order to seek the Commission's approval to proceed with the licensure process to obtain an affiliate broker license. In that Application, he revealed that he had two felony convictions in 2005, for which he received probation and an assessment of fines. Mr. Bernard has satisfied all terms of his probation and has paid all of the fines assessed.

**Commissioner Blume made a motion to approve Brett Bernard to move forward in the licensure process for affiliate broker; seconded by Commissioner DiChiara; motion carried.**

APPLICANT: DEIDRA LEIGH MCGILL: PRINCIPAL BROKER: SUE ACEE  
# 282767

Sue Acee is the PB of Wyndham Vacation Resorts, Inc.- Smoky Mountains # 256346 located in Sevierville, TN. Ms. McGill has taken and passed the timeshare person exam and has submitted her application for a timeshare salesperson license. Ms. McGill revealed that in 2004, she was convicted of four felonies stemming from an incident of fraud involving computer use without authority. Ms. McGill was sentenced probation, anger management counseling, and community service. Ms. McGill petitioned the court for early termination of her probation, which was granted by the court in 2006.

**Commissioner Alexander made a motion to approve Deidra Leigh McGill to move forward in the licensure process for timeshare license; seconded by Commissioner McMullen; motion carried.**

APPLICANT: MARK ATKINSON #329657; PRINCIPAL BROKER: FRAN HOOTEN  
#322944

Fran Hooten is the PB of Keller Williams Realty # 258732 located in, Mt. Juliet, TN. Mr. Atkinson # 3269657 has applied for an affiliate broker license. Mr. Atkinson has passed the affiliate broker exams and has revealed he had one felony conviction in 1994. Mr. Atkinson was sentenced to 1 year supervised probation, plus 25 hours of community service. Mr. Atkinson also had to pay the costs of extradition, and attend a check writing or money management seminar. Mr. Atkinson completed all requirements ordered by the Court.

**After hearing from the applicant and his principal broker and much discussion, Commissioner Collins made a motion to approve Mark Atkinson to move forward in the licensure process for an affiliate broker license; seconded by Commissioner Blume. Discussion followed during which Commissioner Alexander asked the principal broker if the firm has teams and if so, do the team captains disburse the commission checks. Ms. Hooten stated that the firm accounting was handled by the former principal broker and that she would need to confirm with her how the disbursement was handled. Commissioner Griess explained that only a principal broker can pay an affiliated licensee. Commissioner Collins withdrew his motion to approve Mark Atkinson; seconded by Commissioner Blume. Commissioner McMullen made a motion to postpone consideration of Mr. Atkinson's application until the next scheduled board meeting; seconded by Commissioner Hills; During discussion of the motion,**

**Commissioner DiChiara emphasized Mr. Atkinson had not given her cause for concern, but rather her concern was with the principal broker supervision. Commissioner Alexander made a motion to call for the question and vote on the motion still on the floor made by Commissioner McMullen; roll call vote Commissioner Franks, Commissioner Alexander, Commissioner Hills, Commissioner Blume voted Yes in favor of the motion to defer and Commissioner McMullen, Commissioner Collins, Commissioner Griess, and Commissioner DiChiara voted No against the motion to defer; tie vote, motion fails; Commissioner DiChiara makes a motion to approve Mr. Atkinson to move forward in the licensure process for an affiliate broker license; Chair rules motion dies for lack of a second; Commissioner Franks makes a substitute motion for Commissioner McMullen's motion, which was still on the floor, to approve Mr. Atkinson to move forward in the licensure process for an affiliate broker license; seconded by Commissioner Alexander; roll call vote; 7 Commissioners voted Yes in favor of the motion to approve; Commissioner Collins passed on the vote; motion carries 7 yes, 1 pass.**

**Commissioner Alexander made a motion that TREC conduct a full audit of the escrow accounts of Keller Williams Realty #258732 and the Principal Broker, Fran Hooten, to be completed by the TREC auditor, once hired and until then, by a Broker Audit Form; motion seconded by Commissioner DiChiara; motion carries.**

APPLICANT: MARGARET HUNNICUTT; PRINCIPAL BROKER: ELGIN "PETE" GERDTS #231667

Elgin "Pete" Gerdts is the PB of Team Success dba Realty Executives Kingsport # 256443 located in Kingsport, TN. Ms. Hunnicutt has completed an Application for Decision Regarding Prior Criminal Sanctions in order to seek the Commission's approval to proceed with the licensure process to obtain an affiliate broker license. Ms. Hunnicutt has revealed the following in her Application for Decision: Conviction of two felony counts in 2005. Ms. Hunnicutt was sentenced to jail for 140 days and the rest of her concurrent sentences were served on probation. She was granted early termination of her probation in 2009. The court also ordered Ms. Hunnicutt to make restitution and pay fees and costs. She has completed all items ordered by the court order.

**Commissioner Collins made a motion to approve Margaret Hunnicutt to move forward in the licensure process for affiliate broker license; seconded by Commissioner Blume; motion carried.**

#### **AGREED ORDER--ASSISTANT GENERAL COUNSEL, ROBYN RYAN**

Assistant General Counsel Robyn Ryan presented for the Commission's review and discussion, an Agreed Order in the matter of TREC v. Candance Higdon Complaint Number 201302224. The Agreed Order which had been executed by Respondent Candance Higdon requires: Respondent's affiliate broker license # 275500 be suspended for 6 months

beginning 8/6/2014; Respondent must pay a civil penalty in the amount of \$5,000.00 payable in two equal payments each \$2,500.00 with the initial payment due 9/1/2014 and the second payment due 10/1/2014. Within one year, Respondent must complete 60 hours of continuing education courses within one year. 30 of the 60 hours must be taken as follows: 4 hours ethics, 16 hours contracts, and 10 hours agency. Further Respondent must attend a full regularly scheduled meeting of the Tennessee Real Estate Commission within 6 months of suspension of license. If any part of agreement is not completed as required, respondent's license will automatically be revoked.

**Commissioner McMullen made a motion to approve AGREED ORDER; seconded by Commissioner Collins; motion carried.**

### **EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

Ms. Maxwell presented the following information to the Commission for review via handouts.

#### **ONE HOUR COURSE DURATION**

Discussion of proposed change to Rule 1250-05-.03(1)(c) to allow for approval by Commission of continuing education courses which are one hour in length. Currently one hour is defined by Rule 1250-05-.03(2) as 50 minutes. Executive Director Maxwell noted that the ARELLO Digest indicated that 17 states approved one hour classes.

After discussion, the Commission determined that instead of a lengthy rule change process, that a statutory change might be a more expeditious avenue to effectuate the proposed change. Since Chris Sexton, Governmental Affairs Liaison for the Tennessee Association of Realtors, was present at the meeting, the Commission requested that he address the issue of whether or not TAR might be willing to add this item to its 2015 legislative agenda.

Chris Sexton stated that he would explore with the TAR Governmental Affairs Committee the possibility of their adding the proposed change to the TAR 2015 legislative package, thereby proposing an amendment to the existing statute which would allow the Commission to approve one hour CE courses. Mr. Sexton stated that he would report his findings at the September 10, 2014 Commission meeting.

**Commissioner Collins made a motion that it is the intent of the Commission to pursue the proposed change to Rule 1250-05-.03(1)(c) through the rule making process if TAR does not add the item to its 2015 legislative package; seconded by Commissioner Blume; motion carried.**

## **UPDATE ON COURSE RNEWALS**

Ms. Maxwell reported course renewals were mailed out 3 weeks ago to 176 schools for 1400 courses being offered.

## **COURSE REVIEW**

Ms. Maxwell presented the educational courses and instructors set forth on the August, 2014 Education Report for Commission Approval.

**Commissioner Collins made a motion to approve the courses for Commission evaluation A1 through A19; seconded by Commissioner McMullen; motion carries.**

**Commissioner Franks made a motion to approve A20; motion seconded by Commissioner McMullen; motion carries.**

## **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL**

Ms. Maxwell presented the following information to the Commission for review via the iPads:

### **COMPLAINT STATISTICS REPORT**

Ms. Maxwell presented complaint statistics to the Commission. As of July 31, 2014, TREC had a total of 162 open complaints. The total number of closed complaints for the current Fiscal Year 2013-2014 is 340. The total civil penalties that were collected in July 2014 were \$48,840.00.

### **COMPLAINT REPORT**

Consent Orders Fees \$10,750.00, Reinstatement Fees \$36,890.00, E&O Penalty Fee \$1,200.00 Total collected in July 2014 \$48,840.00

### **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month ending July 31, 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of July 31, 2014, there were 24,794 active licensees, 1,185 inactive licensees and 7,663 retired licensees (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,886 active firms and 207 retired firms. Grand total of firms and licensees 4,093. There were 382 new applications approve during the month of July 2014.

## **E&O UPDATE/QUARTERLY CLAIMS REPORT**

Ms. Maxwell updated the Commissioners on the number of E&O suspensions and revocations as of July 31, 2014.

Ms. Maxwell stated that as of 7/31/2014, approximately 503 people are in a revoked status for failing to provide proof of E&O coverage as required by TCA 62-13-112. The amendments to TCA 62-13-112 (effective 7/1/2013) require the staff to automatically revoke the licenses of those licensees who have been suspended for more than 1 year. Ms. Maxwell explained the process to get a license reissued after it has been revoked pursuant to TCA 62-13-112.

## **E&O QUARTERLY CLAIMS REPORT**

Ms. Maxwell had previously sent to each Commissioner a copy of the 2<sup>nd</sup> Quarter E&O Claims report supplied by RISC insurance, along with an explanation, written by Cindy Rice Grissom, of the graph which accompanied the report. There were no questions concerning this information.

## **TREC MANUAL STATUS**

Ms. Maxwell reported that the Administration is working toward getting a version of the TREC Rules and Statutes which will be online, free to the licensees, updated frequently and user friendly. A Request for Proposal is scheduled to be released for such a resource mid to late August, 2014. Ms. Maxwell will report on the progress of the RFP process at the September, 2014 meeting. The Commission requested that Deputy Commissioner Giannini and/or Rachel Power attend the September 2014 meeting and update the Commission on what the licensees can expect from the online resource and when it might be expected to be available.

## **INFORMAL APPLICANT APPEARANCE**

APPLICANT: ROBERT BYRON MCEWEN #329710; PRINCIPAL BROKER: DANIEL D. LANE # 223495

Daniel D. Lane is the PB of ABL Realty Services #256594 located in Nashville, Tennessee. Mr. McEwen has passed the affiliate broker exams and applied for an affiliate broker license. He has revealed the following: Several misdemeanors convictions 1997, 1998, 2003, and 2013 and 5 felony convictions during the period 1998-1999. The convictions related to incidents involving controlled substances. For the Felony convictions, Mr. McEwen spent 5 months in jail and 4 years on supervised probation. Mr. McEwen completed all court ordered requirements.

**After asking a number of questions of the applicant and Daniel Lane, the prospective principal broker, and after much discussion and deliberation, Commissioner Blume made a motion to approve Robert McEwen to move forward in the licensure process for affiliate broker license; seconded by Commissioner Collins; motion carried.**

### **APPRENTICE/TRAINING PROGRAM**

Public Chapter 881 requires each regulatory board to submit a plan for an apprenticeship program by 12/31/2014, or in the alternative, if the agency currently has an apprentice program in place, it must submit specific historical data concerning the program. In discussing the formulation of an apprentice program as required by Public Chapter 881, it was suggested that the affiliate broker status was created to operate as an apprentice program with the affiliate broker serving as an apprentice under the guidance and supervision of a principal broker. Research into the history of the legislation and rules could substantiate that the affiliate broker status was designed to function as an apprentice program to give new licensees an opportunity to learn the real estate business under the supervision of a PB. Each PB who agrees to accept an affiliate license into his office, signs the affiliate's application under a statement required by TCA 62-13-303(e) (3) confirming and affirming that the PB certifies and affirms that the named affiliate licensee applicant is honest and trustworthy and that he will actively supervise and train the applicant during the period the licensee remains affiliated with the principal broker's firm. The Commission discussed this matter and determined that the current affiliate broker' relationship to the principal broker is an apprenticeship program.

**Commissioner McMullen made a motion that the Commission directs staff to respond to the Legislature that the affiliate broker is part of an apprenticeship program. Motion seconded by Commissioner DiChiara; motion carried.**

### **FINGERPRINT UPDATE**

Ms. Maxwell presented an update on the fingerprint reports which are required pursuant to TCA 62-13-303(1). Since 1/1/2014 Ms. Maxwell reported that there have been 2,499 potential applicants fingerprinted; of those, 501 had an indication of some interaction with law enforcement, 1,939 had no indication, and 59 had to be reprinted.

## **BUDGET**

Ms. Maxwell had previously sent a copy of the July, 2014 budget to the Commissioners for their review. No Commissioners had questions on the July, 2014 budget.

## **CHATTANOOGA MEETING**

The Chattanooga meeting is Oct. 9<sup>th</sup> and 10<sup>th</sup>, 2014. All commissioners plan to be present for meeting.

## **ARELLO**

Ms. Maxwell reported that she, Commissioner DiChiara and Attorney Cropp will attend the ARELLO annual conference in Philadelphia from September 17- 21, 2014.

## **LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL**

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Ryan read it into the record: “Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.” Below is a copy of the August, 2014 Legal Report with the motions made by the Commission noted and decisions indicated.



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE  
AND INSURANCE  
OFFICE OF LEGAL COUNSEL**

Davy Crockett Tower,  
500 James Robertson Parkway  
NASHVILLE, TENNESSEE 37243  
(615) 741-3072 fax 615-532-4750

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION  
FROM: JULIE CROPP, Assistant General Counsel  
SUBJECT: AUGUST LEGAL REPORT  
DATE: August 6, 2014

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**\*Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.**

**1. 2014001031**

**Opened: 2/12/14**

**First License Obtained: 7/12/93**

**License Expiration: 5/9/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2010005791 – Closed Final Order \$100 + costs (E&O)  
2014002871 – Under review by legal**

Complainant is an investor of real estate who states that Respondent (principal broker) told Complainant that Respondent could assist Complainant and Complainant's investors and clients in acquiring, rehabbing, managing, and selling property. Complainant states that Respondent has been dishonest and has failed to account to Complainant and Complainant's clients. Complainant alleges that Respondent has kept cash receipts, not kept proper books, wrongly evicted tenants, failed to maintain homes, made misrepresentations of the condition of homes in order to lease them, and has written contracts to include non-refundable deposits. Complainant further alleges that Respondent has charged Complainant for services not rendered and has refused to account for escrow monies regarding Complainant's properties and properties owned by several other entities, which Complainant refers to as Complainant's client entities. Complainant also alleges that Respondent has refused to provide invoices for work Respondent charged for and alleges that Respondent admitted that invoices are missing. Finally, Complainant states that Respondent has not returned Complainant's calls while they were in business together.

Complainant provided a transcribed statement from one of the Respondent's former employees, copies of receipts for different properties, and handwritten notes regarding rent monies and deposits. The former employee stated that, when a security deposit was received, the employee was instructed to write nonrefundable on the receipt, that it had to be in the form of cash or money order, and that the money was given to Respondent. The employee further stated that there were occasions where the rental property was not available to tenants who had already given Respondent a security deposit. The employee also stated that rent money was collected by another employee and given to Respondent in envelopes, but not all rent money was posted in the company's program or deposited in the bank for remittance to the owners. The employee further stated that Complainant bought properties, that Respondent gave estimates on rehabbing the properties, and that Complainant would give money up front to Respondent, which was deposited into a separate company's account and used to pay contractors. The employee stated that Respondent went over budget multiple times. Further, the employee stated that Respondent would not authorize repairs, such as lock replacements, in order to prepare homes for new tenants to move in. The employee stated that appliances were taken from Complainant's homes and delivered to another property that Respondent managed, outside of the property management firm. The employee also stated that an accounting student reconciles checks for Respondent's property management company. The employee further stated that one of the tenants paid their rent directly to Respondent and never made it on the company's system, which led to a faulty eviction. Further the employee stated that the copies of receipts provided are of money that never made it into the bank or into the company's software system. It appears from the statement and documents provided by Complainant that the former employee was instructed to gather receipts and other documentation while working for Respondent and then quit.

Respondent states that Complainant formed an LLC which invests in rental and investment properties on behalf of Complainant and other investors in Complainant's company. Respondent states that Complainant selected Respondent's company to source and buy properties with the intention of renovating and selling them to investors, and Respondent was supposed to get a percentage of profit on sales. Respondent states that open books and reconciliations were provided regularly to Complainant. Respondent states that approximately forty (40) houses were acquired by Complainant's company and at least half were sold, but Respondent never received any profit as originally agreed. Respondent states that Complainant began forming other LLCs to buy property with other investors, and Complainant negotiated a fee with a bookkeeper in the office to help with the books. Respondent states that the former employee who gave the statement with the complaint was an assistant who had no real estate experience and did not handle or balance the books. Respondent states that additional purchases were stopped, and Complainant refused to pay Respondent profits because the homes were over budget. Respondent states that Complainant fired Respondent's property management company and hired a new company. Respondent states that Respondent's former employee was

hired by one of Complainant's LLCs, and Complainant requested that the employee bring files, information from e-mails and bank accounts, and other items. Respondent states that Respondent made every effort to do what Complainant hired Respondent to do, and Respondent states that the statement made by the former employee is misleading and contains no specific information. Further, Respondent states that a complaint was filed in a civil court against Complainant's company and Respondent's property management company. Respondent further states that the former employee removed documents from Respondent's office, and Respondent has very limited access to any information to show books and records. Respondent states that the documents Complainant provided show that receipts were written, and that deposits to the appropriate accounts can confirm monies were deposited on time. Respondent states that this is a dispute over profits from the investment in the properties.

Complainant submitted additional information stating that no agreement in writing was made regarding profit sharing, and they were just negotiations. Complainant states that Respondent was paid in buyers' commissions once the properties were sold. Complainant further states that many move-in deadlines were missed and deposit money was not returned to tenants due to Respondent's mismanagement of the property. Complainant states that it was discovered that rent was not held in an escrow account, and Complainant set up an escrow account for Respondent and told Respondent not to disburse the money without landlord permission. Complainant states that Respondent has still not accounted for rents, and most investors have yet to receive money and accounting for rents. Complainant states that another property management company is now managing the properties.

An investigation was requested in order to attempt to obtain additional information. Respondent reported to the investigator that Respondent was providing all records in Respondent's possession pertaining to the request, but the former employee took files and financial information when leaving to work for Complainant, and Respondent filed a police report (a copy was provided). . Further, the investigator forwarded information from Complainant stating that an employee was paid a large amount of money for a property and an income statement showing that a large amount of money was spent on repairs. Also from Complainant, the investigator obtained reports from the company performing the rehabs which outline the deposits and payments relating to the rehabs as well as reports relating to the operating and escrow accounts of Respondent's property management company and a general ledger of income and expenses. The investigator also obtained documentation from Respondent, including a listing of approximately fifty-five (55) properties owned by Complainant and the dates sold to other entities (most of which appear to be within the time that the properties were managed by Respondent) and Property Management Agreements between Complainant's company and Respondent which laid out each party's obligations and duties and compensation. Also provided by Respondent were files on each of the properties, some of which contained lease agreements (Respondent states that those which are without lease agreements were taken

by the former employee) and the files included general ledgers outlining income and expenses. Additionally, accounting documents were provided. It appears that there were a number of properties involved and the parties had a very involved relationship with regard to the properties. Additionally, the properties appear to have been transferred to new owners sometime within the management period. The documentation provided and obtained with regard to this complaint does not appear at this time to evidence a violation of TREC's statutes and/or rules by Respondent.

**Recommendation: Close.**

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to close; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**2. 2014002871**

**Opened: 3/6/14**

**First License Obtained: 7/12/93**

**License Expiration: 5/9/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2010005791 – Closed Final Order \$100 + costs (E&O)  
2014001031 – Under review by legal**

Complainant alleges that Respondent (principal broker – same Respondent as in complaint 2014001031 above) operated a property management firm that managed Complainant's investment properties. Complainant states that several attempts were made to contact Respondent, who failed to respond or provide services, including the fact that there was no management contract between the property management firm and Complainant's company. Complainant states that Complainant transitioned the properties to a different property management firm, and a request was made to Respondent to settle the account. Complainant states that Respondent did not show all appropriate income and expenses, and there was a shortfall of rental income on top of unaccounted expenses. It appears, based on e-mail correspondence between Complainant and Respondent, that Complainant bought the investment properties from the investor Complainant in the previous complaint 2014001031, and it appears that the management of the properties continued as part of the terms of that sale.

Respondent submitted a response stating that a property management contract was never entered with Complainant. Respondent states that Complainant purchased four (4)

properties from the Complainant in complaint 2014001031 above, which were managed by Respondent pursuant to a contract with the previous owner. Respondent states that, when Complainant purchased the properties from the previous owner, there were third party agreements of which Respondent was not aware which did not affect Respondent managing the properties. Respondent states that final rents were disbursed and deposits were sent to a new property management firm as requested, within one day of being made aware of the new ownership. Respondent states that Respondent corresponded with Complainant, and Complainant's complaint should be with the previous owner, who Respondent states apparently did not disclose to any investors the terms of the management contract, which the previous owner had a large influence on creating. Respondent states that full disbursement has been made and attached statements from Respondent's property management software. An investigation yielded no further documentation on this Complainant's properties because Respondent again stated that there was no agreement with this Complainant, and the previous Complainant sold the properties to this Complainant, and Respondent was instructed to pay Complainant out and sent all documentation along with the response.

The documentation provided and obtained with regard to this complaint does not appear at this time to evidence a violation of TREC's statutes and/or rules by Respondent.

**Recommendation: Close.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to close; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**3. 2014006231**

**Opened: 4/28/14**

**First License Obtained: 12/21/99**

**License Expiration: 2/24/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**4. 2014006232**

**Opened: 4/28/14**

**First License Obtained: 1/30/07**

**License Expiration: 1/29/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

## **History: No Prior Disciplinary Action**

Complainant is one of two owners of a property. Respondent 1 is a principal broker, and Respondent 2 is an affiliate broker. Complainant states that Respondents' firm was hired to sell the property. Complaint states that Complainant discovered that the property was occupied by unknown tenants, and Complainant contacted the co-owner, who stated that Respondents contacted the co-owner about possibly renting the property, but no documents were ever signed. Complainant states that Complainant contacted Respondent 1, who confirmed that the property was occupied and stated that Respondent 1 had done some repairs on the property. With regard to rent money collected, Complainant states that Respondent 1 stated that Respondent 1 was paying the rent proceeds to a bank toward the co-owner's bankruptcy, but Complainant states that the co-owner was paying on the bankruptcy by auto-draft from paychecks, and Respondent 1 was lying because the bank denied receiving any payments. Complainant states that Complainant requested the money collected for rent and states that Respondent 2 refused. Complainant states that neither Complainant nor the co-owner knew that anyone was in the home because neither had signed documents giving Respondents permission to lease. Complainant provided a copy of the executed lease agreement, which lists Respondents' firm as landlord/agent and owner, and the landlord/agent signature on the lease contains the signature of an unknown individual who appears to be unlicensed.

Respondent 1 submitted a response stating that Complainant called the firm with a concern that a tenant was occupying Complainant's property without Complainant's acknowledgement. Respondent 1 states that a meeting was set up with the parties, and Respondent 2 provided Complainant with the lease and invoices of work done to the property. Respondent 1 states that the seriousness of the matter was discussed with Respondent 2, and Respondent 2 apologized to Complainant. Respondent 1 states that Complainant has not demanded anything from the firm, and the firm strives to accommodate all clients and keep them satisfied. Respondent 2 submitted a response stating that the co-owner contacted the firm to sell the property, and the co-owner advised that the mortgage was behind, and the property was co-owned by Complainant, who may be hard to work with because they had a messy break up. Respondent 2 states that Respondents met with Complainant and discussed the short sale process and Complainant's bankruptcy filing. Respondent 2 states that Complainant agreed to list the property with the firm but requested that the co-owner should handle the sale. Respondent 2 states that, after several months of working to sell the property, the co-owner filed bankruptcy without notifying Respondent 2 or the lender, and the lender had to close the short sale file. Respondent 2 states that Respondent 2 suggested and the co-owner agreed to place a tenant in the home, and Respondent 2 found a tenant and did repairs to the property, and Respondent 2 and the co-owner agreed that the firm would be reimbursed through rental payments. Respondent 2 states that Complainant called and was angry upon notification that tenants were in the home. Respondent 2 states that Respondent 2 accommodated Complainant's schedule and met with Complainant to give

invoices regarding the home's upkeep, but Complainant disputed the invoice amounts. Respondents provided documentation, including an Exclusive Right to Sell Listing Agreement signed by both owners.

It appears that neither Respondent accounted for money alleged to be owed by Complainant. Further, it appears that Respondents' failure to secure a written agreement with the owners to rent the subject property constitutes a failure to be loyal and the failure to consult with Complainant at all regarding tenants appears to be improper. Finally, the lease's statement that the firm was the landlord/agent and owner of the property appears to be a misrepresentation. Also, it is recommended that the Commission discuss the issue of the apparent unlicensed individual signing the lease agreement on behalf of the firm.

**Recommendation: For each Respondent: Consent Order in the amount of \$2,000 for violations of T.C.A. §§ 62-13-312(1), (5), (14), and (20) and 62-13-404(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation for each Respondent: Consent Order in the amount of \$2,000 for violations of T.C.A. §§ 62-13-312(1), (5), (14), and (20) and 62-13-404(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner McMullen; 7 yes, 1 no (Commissioner Collins voted no); motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

Question by legal counsel is any further action warranted for unlicensed person signing lease agreement on behalf of firm?

**Commissioner Alexander made motion for no further discussion; seconded by Commissioner DiChiara; motion carries.**

**5. 2014006241  
Opened: 4/17/14  
First License Obtained: 8/26/02  
License Expiration: 3/21/15  
E&O Expiration: 1/1/15  
Type of License: Principal Broker  
History: 2012014031 – Closed \$500 CO**

Complainant's firm was the listing firm for a property where Respondent (principal broker) was the buyer's agent. The transaction did not close. Complainant states that the buyer is in agreement regarding settling the earnest money situation but alleges that Respondent has stated that, even if a mutual release is executed, Respondent intends to pursue Complainant and the seller anyway. Complainant states that Respondent has been advised that Complainant intends to have the funds interpleaded if a resolution is not reached, but Complainant states that Respondent is not acting in the best interest of Respondent's client. Complainant also states that Respondent is stalking Complainant and others at the office and has notified the local police and sheriff and wrote a cease and desist letter to Respondent.

Respondent states that Complainant is not being truthful and states that Respondent and buyer refuse to sign the addendum to the earnest money disbursement form, but Respondent signed the disbursement form itself and sent it to the parties more than once. Respondent states that the addendum to the disbursement form removed the opportunity to file any complaints with TREC or any associations. Respondent further states that the buyer's earnest money has not been released, and the seller or Complainant will not release it until the addendum is received. Respondent further states that Respondent has made many efforts to resolve the matter and have the buyer's earnest money refunded. Respondent further denies stalking or threatening Complainant and/or Complainant's firm.

Both parties attached documentation and correspondence. A counter offer addendum to the purchase and sale agreement provides for an earnest money payment of \$1,500 to be paid to a title insurance company, and, according to an amendment to the agreement, the buyer agreed to pay an additional \$1,000 under the conditions that it would be credited to the buyer at closing and shall be forfeited and made non-refundable upon a failed sales transaction, with the original earnest money to be credited at closing and contingent upon financing. An attorney for buyer requested the earnest money, and correspondence from Respondent and the buyer states that buyer will agree to \$2,000 earnest money disbursement to buyer and \$500 earnest money disbursement to seller, without additional addendums and clauses. Further correspondence from Complainant states that the funds would be interpleaded. It appears that earnest money disbursement and mutual releases were submitted by each side to the other. An email from Complainant's affiliate broker states that an attorney was hired to settle the issue. It does not appear that there is a violation by Respondent.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**6. 2014007321**

**Opened: 5/2/14**

**First License Obtained: 8/30/96**

**License Expiration: 6/21/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2012004361 – Closed \$500 CO  
2014010161 – Under review by legal**

**7. 2014007322**

**Opened: 5/2/14**

**First License Obtained: 4/12/02**

**License Expiration: 11/29/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: 2014010162 – Under review by legal**

Complainant in this matter is the Respondent licensee in the previous matter (2014006241), and Respondent 1 (principal broker) was the Complainant in that matter. Respondent 2 is an affiliate broker. This complaint appears to arise from the same transaction as the previous matter. Complainant states that Respondent 1 did not work within the scope of a licensed broker during the transaction. Complainant states that Respondent 1 failed to disclose that an unlicensed assistant had an ownership to the property. Complainant states that unlicensed assistant acted in the capacity as agent and received confidential information regarding the buyer's financial information. Complainant further alleges that false information was given which misled the buyer and states that Respondent 1 sent an extension to the contract with no intention to honor it. Complainant further states that Respondent 1 failed to supervise. Complainant further alleges that Respondent 1 failed to provide services to each party in the transaction with honesty and in good faith, failed to disclose to each party adverse facts, threatened to take action adverse to the client's interests, counseled Complainant's client on how to terminate or amend a contract, and failed to work with Complainant because of race and gender. Complainant states that the buyer entered into an agreement and had to extend the agreement due to delays in loan processing. Complainant states that a closing date amendment was sent to the listing agent, but the form was never signed by the seller, though an amendment with an extension was returned. Complainant outlined and provided correspondence regarding discussion of extending the closing. Complainant states that Respondents later accepted another offer, stating that they could not reach Complainant to get an extension signed. Complainant also stated that Respondents uploaded content in MLS stating buyer's financing fell through, which Complainant

states is untrue and further outlines correspondence discussing possible extensions. Complainant further states that seller did not give buyer a 48 hour right of refusal to release the contingency but instead terminated and breached the agreement. Complainant states that buyer should not lose the earnest money since seller terminated the contract. Complainant further states that both Respondents were unethical in the transaction, and Complainant was discriminated against. Finally, Complainant states that Respondent 1 failed to interplead the earnest money in a timely fashion, even though a title company is the holder of the money.

Respondent 1 submitted a response stating that the deal involved earnest money which was non-refundable, and the buyer retained an attorney who later withdrew. Respondent 1 states that an agreement was reached in which the seller was to receive \$500 and the buyer was to receive \$2,000, but the earnest money release was not executed due to discussions regarding filing complaints and other matters. Respondent 1 states that an amendment was prepared to clarify the release's terms, but Complainant contacted Respondent 2 attempting to receive money outside the contract and the agreement. Complainant states that an interpleader action was filed via an attorney. Respondent 1 further denies other allegations stating that Respondent 1's participation began when the earnest money dispute commenced, at which time Respondent 1 began to investigate the matter. Respondent 1 further denies allegations of discrimination based on race and gender, and states the buyer was never mistreated in any way. Respondent 2 submitted a response stating that the other "agent" referenced in the Complaint is not a licensee but an assistant who was involved in the transaction by forwarding and following-up with communications; making copies and sending documents to lenders, title companies, and Complainant for closing; following-up on loan commitments and communicating loan progress to Respondent 2 and other owners; and secretarial duties such as delivering documents, ordering repairs requested by the inspection, and making MLS updates. Respondent 2 states that the assistant did not perform activities requiring licensure. Respondent 2 states that the first extension expired two (2) weeks before the MLS status was changed to active, and sellers exercised their right to market their own property. Respondent 2 further states that sellers were not willing to extend the contract because buyer was unable to obtain financing with lender 1, and lender 2 was unable to get the loan done during the extended timeframe. Respondent 2 states that Complainant's accusations are unfounded, and the discrimination claims are untrue.

Complainant submitted additional reply in response stating that buyer's attorney did not withdraw but put his representation on hold. Complainant further asserts that buyer acted in good faith, and seller failed to provide adequate notice regarding a timeframe of stipulations of performance contingencies regarding the extension. Complainant further states that Respondents were dishonest and used an unlicensed assistant to act in the capacity of an agent, with personal ownership rights to the property. Complainant further states that Respondents did not provide records of their attempts to reach Complainant and of their conversation with buyer without Complainant's knowledge. Complainant

further states that the property was marketed in a dishonest way. Complainant also states that Respondent 1, as principal broker, should have been more involved with the matter. Complainant states that Respondents slandered Complainant.

It appears that this was a contentious transaction; however, it does not appear that there is a violation of TREC's statutes and/or rules. With regard to the earnest money situation, it appears that the transaction documents show that the earnest money was being held by a title company, thus relieving the broker of responsibility for the funds pursuant to Rule 1260-02-.09(5).

**Recommendation: Dismiss.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**8. 2014010161**

**Opened: 6/27/14**

**First License Obtained: 8/30/96**

**License Expiration: 6/21/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2012004361 – Closed \$500 CO**

**2014007321 – Under review by legal**

**9. 2014010162**

**Opened: 6/27/14**

**First License Obtained: 4/12/02**

**License Expiration: 11/29/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: 2014007322 – Under review by legal**

Complainant is the buyer in the transaction referenced in the previous matter. Respondent 1 (principal broker) and Respondent 2 (affiliate broker) are the same Respondents as the previous matter. Complainant asserts the same allegations as above but states the property was shown while Complainant had a contract on the home. Complainant further states that the home was being "shopped" by Respondent 2 and Respondent 2's assistant in contract extension and that Respondent 2 would not return calls. Complainant asserts that the assistant was acting as a realtor and replied to emails

and participated in calls. Complainant states that this assistant was an investor in the property mentioned, and this fact was not revealed to Complainant. Complainant states that Respondent 1 said the escrow money would be interpleaded in the fall but had not been as of the date Complainant filed the complaint.

Respondent 1 responded on behalf of Respondents stating that the earnest money based on the extension was non-refundable and this issue was discussed by phone and emails with Complainant's agent. Respondents state that initially Complainant hired an attorney and later that attorney withdrew and that Respondent 2 attempted to work an agreement concerning the earnest money but that Complainant's agent would not agree. Respondents state that the seller has the right to market and continue to market the home until the sale closes, and Respondent 2 owns a company which was the seller of the property. Respondents state that the assistant has the right to work to get deals done, but the assistant was not acting as a real estate agent. Respondents further state that the firm was not holding the earnest money, and the title company was holding the earnest money while negotiations went back and forth. Respondents state that the Complainant was coached by Complainant's agent to file the complaint.

As stated in the previous matter, it appears that this was a contentious transaction with much back and forth about discussions of an extension as well as regarding earnest money. However, there does not appear to be a violation of TREC's statutes and/or rules by Respondents.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**10. 2014006311**

**Opened: 5/6/14**

**First License Obtained: 2/14/05**

**License Expiration: 5/1/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Complainant hired Respondent's firm (Respondent is principal broker), and a tenant was secured soon after for a twelve (12) month lease with an option to purchase. Complainant addresses a number of alleged problems with Respondent's representation, including that animals were discovered on the premises without written

permission, and an additional security deposit was requested but not collected and rent was increased. Complainant alleges that the security deposit and last month's rent were not collected by the date required in the Lease Agreement. Complainant states that tenants paid rent intermittently and late. Complainant states that Respondent's attorney gave notice of delinquency, but no action was taken. Complainant states that Complainant's attorney obtained a judgment and possession against tenants, and Complainant is working toward securing lien(s) against tenants. Complainant alleges that an additional agreement was signed to purchase certain personal items, but the items were not paid for and some items were taken by tenants. Complainant states that substantial damage was done to the property. Complainant states that Respondent did not pre-qualify the tenants or do a credit or history check. Complainant also states that Respondent was acting as a dual agent. Complainant further states that tenants worked next door to Respondent's firm, and Respondent was listed as a reference on tenants' application. Complainant states that two (2) additional adult children lived in the property in contrary to the lease, tenants attempted to put horses on the property, and tenant operated a business out of the property's garage. Complainant further states that one of the tenants was on workers' compensation leave, which was not disclosed to Complainant promptly. Complainant alleges that Respondent did not perform lawn maintenance or inspect the property and states that the bookkeeper made accounting errors. Complainant further states that Respondent allowed an unlicensed person to engage in management services, such as overseeing the move-in and move-out of tenants, and that person allowed tenants to remain in possession after the writ of eviction causing damages.

Respondent submitted a response through an attorney denying the alleged violations and stating that, upon discovery of a dog, rent was increased along with an additional security deposit. Respondent acknowledges that tenants were periodically late with rent, and upon instruction of Complainant, eviction proceedings commenced, but Complainant chose to hire a different lawyer to take over the eviction process. Respondent denies that the property was destroyed or items stolen by tenants and denies that substantial damage was sustained. Respondent denies the allegation that Respondent did not properly screen tenants and asserts that tenants were pre-qualified as required by the property management agreement. Respondent states that employers and prior landlords were contacted, and Respondent received verbal and written references. Respondent denies that Respondent was acting as a dual agent and provided a confirmation of agency status executed by all parties. Respondent states that tenants' violations of the lease were in no way authorized by Respondent, and every known breach and every complaint of breach brought to Respondent's attention was promptly addressed and remedied. Respondent states that the property was inspected on a regular basis and Respondent managed the property in accordance with the property management agreement. Respondent also states that the adult children living on the property was not in violation of the lease and further states that Complainant knew about the children. Respondent states that Complainant participated in negotiations on delinquent rent, and all extensions and/or forbearances

were approved by Complainant. Respondent denies allowing an unlicensed person to act as an agent. Respondent states that Respondent returned to the property with the unlicensed person after tenants vacated for final inspection. Respondent denies the allegation of accounting mistakes, that the unlicensed partner performed real estate services, and that the tenants were allowed to remain in possession of the property contrary to the writ of eviction. Respondent states that to the extent the tenants stayed in the property beyond any legal date of eviction, a law enforcement officer would have to enforce the writ. Respondent states that, upon discovery of horses on the property, the tenants were promptly notified and immediately removed the horses. Respondent states that the Complainant sued Respondent in court, and litigation is ongoing.

Complainant submitted an additional response stating that Respondent's response is untrue and reasserting the issues previously mentioned within the complaint in detail, including issues of alleged mismanagement and accounting errors. The response indicated that Complainant had sued Respondent's firm for alleged violations of the Broker Act, and litigation was underway. Upon review of this matter, office of legal counsel confirmed with Respondent's attorney that there is a lawsuit pending between Complainant and Respondent's firm. Due to the number of alleged issues, it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination.

**Recommendation: Consent Order for Litigation Monitoring.**

**ACTION: Commissioner Collins made a motion to dismiss; motion dies due to lack of a second.**

**Commissioner Griess made a motion to accept legal counsel's recommendation of Consent Order for litigation monitoring; seconded by Commissioner Franks; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**11. 2014006331**

**Opened: 5/2/14**

**First License Obtained: 2/3/00**

**License Expiration: 12/15/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**12. 2014006332**

**Opened: 5/2/14**

**First License Obtained: 12/3/07**

**License Expiration: 12/2/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

***\*This Respondent was broker released on or about 3/7/14.\****

This is the same Complainant as the previous matter and concerns the same property but is a separate complaint against different Respondents (Respondent 1 is a principal broker; Respondent 2 is an affiliate broker). Complainant states that Respondent 2 listed Complainant's home after the parties discussed the property and items which needed cleaning and repairing. Complainant alleges that Respondent 2 assured Complainant that Respondent 2 would video record evidence of damage done by previous tenants, ensure that repair, maintenance, and cleaning was done, and would appear as an expert witness in the lawsuit discussed in complaint 2014006311. Complainant states that an invoice for repairs was paid by Complainant, but the repairs promised were not made, and the property was not prepared correctly for listing. Complainant alleges that Respondent 2 promised to forward a listing agreement for the property, but this was never received. Complainant states that the property was listed on MLS by Respondents' firm, and Complainant alleges that Respondents stated there was interest in the home and the property was being shown. Complainant alleges that, in lieu of a listing agreement for sale of the property, Respondent 2 forwarded a proposal to become property manager, listing agent and purchase the property with early occupancy. Complainant states that Respondent 2 sent a proposed lease agreement for monthly payments for a period not to exceed 3 years, with a balloon payment for the balance of the purchase price. Complainant alleges that, soon after, the MLS was canceled. Complainant states that Respondent 2 moved in the property with small children without authority prior to the period in the agreement. Complainant further alleges that damage was incurred, and Respondent 2 refused to meet with a new agent to turn over the keys after failing to provide monthly installments per the contract. Complainant alleges Respondent 2 later abandoned the home and left it in awful condition.

Respondent 2 submitted no response. Respondent 1 submitted a response through an attorney stating that the actions taken, correspondence, signed documentation and contracts with Complainant were conducted by Respondent 2, and Respondent 1 was never contacted and did not learn of the complaint until it was received by TREC. Respondent 1 states that all documents referenced are from the file held by Respondents' firm. Respondent 1 states that a referral agreement was received and signed by Respondent 2, and Respondent 2 prepared and signed a confirmation of agency status form for Complainants as well as a listing agreement and disclosure forms. Respondent 1 admits that the posting appeared on a website without Respondent 1's approval, and a listing agreement was requested. Respondent 1 states that Respondent 2 assured that there was a fully executed listing agreement, though one was not provided to Respondent 1. Further, Respondent 1 states that the lease installment and sales contract provided by

the Complainant states that no commission was to be paid, but Respondent 1 would not have allowed an agreement if made aware of one. Respondent 1 agrees that Respondent 2 failed to disclose to Respondent 1 and the firm the true status and intention of Respondent 2's activities with regard to Complainant's property, and alleges that Respondent 2 purposefully misrepresented to Respondent 1 that there was an executed listing agreement. Respondent 1 states that affiliate brokers are not allowed to recommend anybody for the repair work and has no knowledge of work performed by a third-party company as alleged. Respondent 1 states there was no knowledge of negotiations or lease proposals or an installment purchase lease agreement. Respondent 1 states that the MLS listing was pulled by Respondent 1 when contacted by another agency stating they were listing the property. Respondent 1 states that corrective measures have been put in place at the firm to be sure that no advertising is done without a listing agreement.

Both Complainant and Respondent sent additional responses further setting out their positions. Respondent 1 states that Respondent 1 has no knowledge of Respondent 2's location and states that Respondent 2's license was sent back to TREC. Respondent 1's failure to insist upon receiving the signed listing agreement which Respondent 2 states existed appears to constitute a failure to supervise. With regard to Respondent 2, it appears that there are issues of failing to disclose Respondent 2's true position (§ 62-13-312(b)(18)) and improper, fraudulent or dishonest dealings (§ 62-13-312(b)(20)). Also there appears to be a failure to disclose a personal interest (§ 62-13-403(7)(A) and Rule 1260-02-.11). The failure to secure the signed listing agreement appears to be a failure to diligently exercise reasonable skill and care (§ 62-13-403(1)) and the MLS listing stating that Respondent is the listing agent appears to be misleading or untruthful advertising (§ 62-13-312(b)(4)). Finally, Respondent 2 failed to respond to the complaint (§ 62-13-313(a)(2)) and has not taken administrative measures for the transfer or retirement of Respondent 2's license (§ 62-13-312(b)(16) and Rule 1260-02-.02(2)). It is recommended that the Commission discuss any further violations by Respondent 2.

**Recommendation: As to Respondent 1, Consent Order for \$1,000 for failure to supervise the activities of a licensed affiliate in violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$4,000 for violations of T.C.A. §§ 62-13-312(b)(4), (14), (16), (18), and (20), 62-13-313(a)(2), 62-13-403(1) and (7)(A) and Rules 1260-02-.02(2) and 1260-02-.11(1), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.**

**ACTION: Commissioner Blume made a motion to accept Counsel's recommendation as to Respondent 1 and as to Respondent 2 PB, to authorize a**

**Consent Order increasing the civil penalty amount to \$8,000 for violations of T.C.A. §§ 62-13-312(b)(4), (14), (16), (18), and (20), 62-13-313(a)(2), 62-13-403(1) and (7)(A) and Rules 1260-02-.02(2) and 1260-02-.11(1), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order; seconded by Commissioner Alexander; Commissioner Griess made a friendly amendment that as to Respondent 1, the civil penalty be increased to \$2,000; Commissioners Alexander and Blume had no objection to the friendly amendment; unanimous vote on the amendment; vote on original motion as amended; unanimous vote; original motion as amended passes.**

**DECISION: The Commission voted to authorize, as to Respondent 1, Consent Order for \$2,000 for failure to supervise the activities of a licensed affiliate in violation of T.C.A. § 62-13-312(b)(15) and violation of Rule 1260-02-.12, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. The Commission voted to authorize, as to Respondent 2, Consent Order for \$8,000 for violations of T.C.A. §§ 62-13-312(b)(4), (14), (16), (18), and (20), 62-13-313(a)(2), 62-13-403(1) and (7)(A) and Rules 1260-02-.02(2) and 1260-02-.11(1), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.**

**13. 2014006351**

**Opened: 4/22/14**

**First License Obtained: 9/6/06**

**License Expiration: 9/5/14**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainants were buyers of a home listed by Respondent (affiliate broker). Complainants state that Respondent pressured them into making a quick offer. Complainants state that, a few days after entering into a Purchase and Sale Agreement, Respondent notified Complainants of a purchase offer from TDOT to buy part of the property to widen a highway. Complainants state that the plan to widen the road was approved several months prior to the contract and allege that sellers and Respondent knew about it but did not disclose this to Complainants. Complainants further state that Respondent instructed Complainants not to disclose this information to the lender, but Complainants did so. Complainants state that Complainants already paid for appraisals and prepared for the closing. Complainants attached documentation, including, but not limited to, email conversations and transaction documents as well as a Tennessee

Residential Property Condition Disclosure form, which was executed by seller and buyers, which states, “Are you (seller) aware of any of the following:...Any authorized changes in roads, drainage or utilities affecting the property, or contiguous to the property?” which was marked “unknown.”

Respondent submitted a response denying that information was withheld. Respondent states that, after Complainants’ offer was written, Respondent received a call from another agent who had interested buyers, and Respondent notified Complainants to ensure that the offer was signed and sent to the seller. Respondent states that, when the property was listed, there was only hearsay that an expansion might happen someday. Respondent states that the seller was unaware of any authorized changes affecting the property until after the contract had been executed, when the seller received a letter from TDOT. Respondent states that it was conveyed that Complainants could sit in on the meeting, but dealings would be with the current owner. Respondent states that Complainants were notified and stated they would handle it after closing on the property. Respondent states that Complainants stated that the lender would have to resurvey and reappraise the property, and Respondent asked why the mortgage company needed to be involved if Complainants were going to handle the matter with TDOT after closing, which Respondent states was merely a question and in no way advice to withhold information from the lender. Respondent states that Complainants accused Respondent of knowing about the road expansion, but Respondent only knew what the community knew—that it might happen someday—and apologized to Complainants. Respondent states that the parties agreed to postpone the offer from TDOT, giving Complainants a chance to close and deal with TDOT directly. Respondent states that Complainant did not provide the information needed from the lender and defaulted on the contract. Respondent further states that Respondent’s broker was closely involved in the transaction, and Respondent closely followed the broker’s instruction. Respondent submitted correspondence between the parties and attorneys regarding the issue as well as seller statements and transaction documents. It appears, based on the information submitted, that Respondent did not have actual notice of the expansion until after the contract was entered into between the parties.

**Recommendation: Dismiss.**

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; roll call vote Commissioners Franks, McMullen and Collins voted Yes in favor of the motion to dismiss and Commissioners Griess, Hills, Alexander, Blume and DiChiara voted No against the motion; Commissioner Alexander made a motion to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order in addition to completion of four (4) hours of continuing**

**education in ethics within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner Blume; roll call vote Commissioners Franks, McMullen and Collins voted No against the motion and Commissioners Griess, Hills, Alexander, Blume and DiChiara voted Yes in favor of the motion; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order in addition to completion of four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**14. 2014006371  
Opened: 4/22/14  
First License Obtained: 9/13/02  
License Expiration: 10/16/15  
E&O Expiration: 1/1/15  
Type of License: Principal Broker  
History: No Prior Disciplinary Action**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014006351 ("affiliate broker").

Respondent states that discussions were held with the affiliate broker numerous times throughout the transaction, and the affiliate broker had no prior knowledge regarding TDOT obtaining a right of way. Respondent states that the affiliate broker would have disclosed any knowledge of the project, and the affiliate broker did not tell the buyers to withhold information from the lender. Respondent states that the seller may have known that an expansion was a possibility from news reports and unofficial communications, but the affiliate broker did not know of the expansion until after the contract was signed, and the official notice from TDOT was provided several days after the contract was accepted. Respondent states that the affiliate broker disclosed this information to the buyers as soon as information was received. Respondent further states that Respondent spoke with the buyers, who were interested in moving forward with the contract and wanted to attend all meetings with TDOT. Respondent further states that the buyers asked the sellers not to sell the property to TDOT so that buyers could sign an offer after closing on the property, and Respondent advised that the seller should contact an attorney to discuss these

options. Respondent further states that, after an attorney was contacted, a letter was received from the buyer's attorney asking for damages, and communications were handled through the attorneys. Respondent states that Respondent supervised the affiliate broker, who had no knowledge of the TDOT project until it was received after the contract was accepted. Respondent submitted the transaction documents, attorney correspondence and statements from seller and seller's family. It does not appear that there was a failure to supervise.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; roll call vote Commissioners Franks, McMullen and Collins voted Yes in favor of the motion to dismiss and Commissioners Griess, Hills, Alexander, Blume and DiChiara voted No against the motion; Commissioner Alexander made a motion to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. §§ 62-13-312(b)(15) and 62-13-403(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order in addition to completion of four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner Blume; roll call vote Commissioners Franks, McMullen and Collins voted No against the motion and Commissioners Griess, Hills, Alexander, Blume and DiChiara voted Yes in favor of the motion; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order in addition to completion of four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**15. 2014006651**

**Opened: 5/30/14**

**First License Obtained: 10/4/05**

**License Expiration: 10/3/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: 201002212 – Closed by Agreed Order (E&O)**

TREC opened a complaint against Respondent (affiliate broker) for potential violations relating to advertising. Included in the complaint were printouts from the internet

advertising Respondent and Respondent's team, which is named after Respondent and is called by a few different names, all of which contain Respondent's name, and Respondent occasionally is referred to as the CEO. Among information advertised about Respondent's team is that the team is #1 in GCI for a firm, that the team sold listings at a specified percentage faster and at a specified percentage higher than the average area realtor in 2012. Two different websites state that Respondent is in a specified top percentage of realtors in the area (there are two different percentages on the two websites). Also included are printouts from Respondent's team facebook page, which contains multiple home listings and has various posts, including such topics as: team recruiting sales agents; team recruiting a position advertising salary and benefits; an administrative leader position in the team; announcements of team participation in a program offering a percentage commission rebate received by the group which states that it is open to certain classes of individuals and invites interested individuals to call in order to find out more information; announcement of a bonus to agents bringing buyers under specified circumstances; statements such as the team is outpacing the market by a specified number of times; announcement of a new individual taking over as a team manager in charge of the team; and a statement that the team is "a real estate company affiliated with [a national firm]..." Other information printed along with the complaint includes a website advertisement for a buyer specialist for the team which advertises a specified first year income as well as a printout of an apparent advertisement for a sales agent to work with buyers which states, in part, that having a real estate license is not necessary. Additionally, a printout was included in the complaint which states that Respondent is planning to move with family from Respondent's current town to a city in another state to work with another real estate team there, but Respondent would be keeping Respondent's local team with a new individual as CEO.

Respondent submitted a response through an attorney stating that Respondent is licensed and only sells real estate within Tennessee, but travels extensively to other states to help other agencies in growing business. Respondent states that there was never any intention to misrepresent Respondent's status or relationship in the operation of Respondent's business under the firm where Respondent is affiliated. Respondent acknowledges that the team is referred to as various names in the websites which could result in some confusion, but there was no intent of misrepresentation. Respondent states that it was perceived that Respondent's firm encourages agents to build their own brand under the firm name because many customers rely on well-established agents to market their property. Respondent states that a conscious effort is made to include the firm name and phone number on everything within Respondent's control to show that Respondent is functioning under the supervision of the firm's broker and not under Respondent's own brokerage. Respondent further states that social media sites function differently from other websites, and internet searches may pull specific information from social media sites and not carry all information over. In reference to the agent bonus, Respondent believes that pertinent details were disclosed, but Respondent states that it may not have been clear that the firm was sponsoring the bonus. Respondent further states that, with

regard to the job advertisement of salary and benefits, it should have been made clear that this was for a clerical, salaried position and not a sales agent. Regarding the sales agent job advertisement which states that having a license is not necessary, Respondent now understands that the verbiage may have unintentionally implied that a sales agent did not need a license, but that is not the case, but Respondent prefers new team members who have not been licensed and may be trained and licensed to become a sales agent. Respondent states that one of Respondent's assistants shadowed Respondent and later became licensed but did not participate or engage in sales activities until obtaining full licensure. With regard to the promotional program, Respondent states that it should have been clarified that the rebate comes from the seller via the settlement agent, and no money from the rebate is allocated to the agent. Respondent states that no sales were made from that program, and Respondent is no longer participating in the program.

The internet advertising materials are lengthy and counsel has made an effort to summarize relevant content for purposes of Commission discussion. Because there are some references that could be construed as a bit misleading, it appears to legal counsel that Respondent would benefit from a letter of warning regarding the Commission's advertising rule 1260-02-.12.

**Recommendation: Letter of warning regarding Rule 1260-02-.12.**

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; motion fails for lack of second; Commissioner Alexander makes a motion to authorize a Consent Order with a \$1,000 civil penalty for violations of Rule 1260-02-.12, plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Hills; Commissioner Griess and Commissioner Collins recuses themselves; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violations of Rule 1260-02-.12, plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**16. 2014006671  
Opened: 5/20/14  
First License Obtained: 5/22/90  
License Expiration: 5/15/15  
E&O Expiration: 1/1/15**

**Type of License: Broker**  
**History: No Prior Disciplinary Action**

A complaint was opened against Respondent (broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014006651 (“affiliate broker”).

Respondent submitted a response through an attorney stating that Respondent served as the acting principal broker for the affiliate broker’s firm from January 1, 2014 through March 31, 2014. Respondent states that, upon stepping into the role, Respondent immediately acted to ensure compliance with TREC’s statutes and rules, was available full-time for agents to discuss advertising compliance issues, and proactively instituted a system of frequent compliance education seminars and monthly meetings for the firm’s agents. Respondent further states that, at the time the Complaint was initiated, Respondent was no longer principal broker for the firm. Respondent states that the new principal broker (Respondent in complaint # 2014006691) was only in the role of principal broker for two days prior to the date that the commission printed the pages from the complaint’s websites. Respondent states that the new principal broker continued training and education of agents, and Respondent included topics of the seminars initiated by Respondent and the new principal broker. In addition to the seminars, emails were sent regarding certain compliance issues, and Respondent attached these emails to the complaint. Respondent states that, upon receipt of the complaints, the new principal broker spoke with the affiliate broker regarding advertising issues, and Respondent and the new principal broker were in continued communication with affiliate broker to ensure activities were in compliance, including a meeting on May 14, 2014. Respondent further states that there are certain challenges with advertising on social media websites, e.g., people other than agents can post to the websites, pages theoretically last indefinitely, and these sites are changed so frequently that it becomes an extremely challenging problem to conduct oversight even by personally reviewing the sites. Respondent requests the Commission’s guidance and direction for avoiding potential compliance violations with regard to social media. Respondent states that, if the affiliate broker is found to be in violation, such violations occurred in spite of proper oversight and supervision of Respondent. Respondent states that all duties as principal broker were performed, including doing all that was practicable to supervise and ensure compliance of agents.

**Recommendation: Letter of warning regarding Rule 1260-02-.12.**

**ACTION: Commissioner Alexander made a motion to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of**

**Consent Order; seconded by Commissioner Blume; Commissioner Griess recuses; Commissioner Collins voted No; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violations of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**17. 2014006691**

**Opened: 5/20/14**

**First License Obtained: 10/27/99**

**License Expiration: 11/20/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the Respondent affiliate broker in complaint 2014006651 ("affiliate broker").

Respondent submitted a response through an attorney stating that Respondent took over as principal broker on April 1, 2014 and is affiliate broker's current principal broker. Respondent became the principal broker of the firm only two (2) days prior to the date the websites with alleged violations were printed. Respondent states that, since becoming principal broker, Respondent has continued the training and education of agents as requested by the previous broker Respondent, and Respondent included a list of topics presented and the dates they were presented. Respondent states that Respondent consistently emphasized that an agent must substantiate any claim or statement made in any advertisement or publications, particularly if it is quantifiable. Respondent also attached emails that were sent to agents to emphasize certain compliance issues, including advertising. Respondent further states that Respondent regularly reviews activities of agents and addresses issues that may be identified. Respondent states that, upon receiving the complaint, Respondent spoke with affiliate broker and instructed that the affiliate broker could not offer rebates, salaries for licensees, and that advertising must not mislead public to believe an agent is a separately licensed company. Respondent further advised affiliate broker to address the issues raised and correct all advertising that does not comply. Respondent states that Respondent met with the affiliate broker and the previous broker Respondent to discuss compliance and followed-up with an email discussing changes, and Respondent offered assistance with the process. Respondent further states that there are certain challenges with advertising on social media websites, e.g., people other than agents can post to the websites, pages theoretically last indefinitely, and these sites are changed so frequently, which creates an extremely challenging problem to conduct oversight even by personally reviewing the

sites, and Respondent requests the Commission's guidance and direction for avoiding potential compliance violations with regard to social media. Respondent further states that Respondent has spent numerous hours reviewing agents' advertising for compliance, and, if the affiliate broker is to be found in violation, such violations occurred in spite of proper oversight and supervision of Respondent. Respondent states that Respondent performed the duties of principal broker, including doing all that was practicable to supervise and ensure compliance of affiliate broker and other agents.

**Recommendation: Letter of warning regarding Rule 1260-02-.12.**

**ACTION: Commissioner Blume made a motion to accept legal counsel's recommendation to send Letter of warning regarding Rule 1260-02-.12; seconded by Commissioner Alexander; Commissioner Griess recused himself; Commissioner Collins passes; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**18. 2014006731**

**Opened: 4/29/14**

**First License Obtained: 3/3/98**

**License Expiration: 9/11/14**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants listed their home with Respondent (broker) and state that they informed Respondent that they wanted a contingency that the home would not sell unless Complainants had another home under contract and the purchase was definite. Complainants state that this contingency was listed in the Listing Agreement. Complainants also wanted their purchase of a home to be contingent upon the sale of their current home. Complainants had a contract to purchase a home which included a written contingency regarding the sale of their current home; however, the sellers received a higher offer and requested that Complainants remove their contingency, or the sellers would accept the higher offer. Complainants did not remove the contingency and lost the contract on the home purchase. Complainants state that they found out that Respondent did not place a contingency in the contract for the sale of Complainants' home. The executed contract for the sale of Complainants' home listed no contingencies, and Complainants state that they believed that the contingency that was written in the Listing Agreement would transfer to a contract. Complainants state that they needed to find a home fast, and so Complainants used another agent to purchase a property. Further, Complainants state that Respondent allowed the buyers of their home to do the final walk through on the closing day, and Complainants' belongings were still in the

home, which caused friction. Ultimately the closing occurred, but Complainants feel as though Respondent caused the closing problems.

Respondent submitted a reply denying the allegations. Respondent states that the Complainants knew that the contract for the sale of their home was not contingent upon Complainants purchasing the new home. Respondent states that Complainants were told that they could opt out of the listing agreement prior to accepting a contract. Respondent states that Complainants chose to move forward and accept the contract without the contingency since they were asking the full price and not paying any closing costs. Respondent submitted emails where Complainants discussed the counter offer stipulations with Respondent, and the e-mail did not discuss including the contingency regarding purchase of the new home. Respondent further states that Complainants had the option to move forward with the purchase of the new home and opted not to do so. Respondent states that Respondent attempted to arrange a time for showings when Complainants needed to find a new home quickly. Respondent further submitted e-mail correspondence with Complainants showing that Complainants were aware that buyers were doing their final walk thru on the closing date, and Complainants replied stating that they would be moving out of the house during that time. Respondent states that Respondent remained professional, courteous and respectful, that Complainants' home closed, and that Complainants got exactly what they chose in the manner in which they chose to proceed. Additional replies were submitted by both parties further reiterating their standpoints, and Respondent submitted polygraph results in an attempt to show that Respondent was being truthful.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**19. 2014006791**

**Opened: 5/15/14**

**First License Obtained: 11/30/88**

**License Expiration: 2/13/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014006731 ("broker").

While there does not appear to be a failure to supervise, Respondent submitted no response to the complaint, which was sent to the firm address on file with the Commission and signed for by an individual at that address.

**Recommendation: Consent Order for \$1,000 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Blume made a motion to accept legal counsel's recommendation of Consent Order for \$1,000 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Collins; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**20. 2014006901**

**Opened: 4/29/14**

**First License Obtained: 9/3/04**

**License Expiration: 12/31/14**

**E&O Expiration: N/A**

**Type of License: Vacation Lodging Service**

**History: No Prior Disciplinary Action**

Complainant states that Complainant booked a cabin rental with Respondent (vacation lodging service) and paid for a cabin but, due to bad weather, could not access the cabin because of a steep, icy driveway. Complainant states that Respondent offered a different cabin but would not refund any money despite the price difference of the cabins and Complainant having purchased trip insurance. Respondent further states that a sign in the cabin stated that firewood was provided, but there was no firewood, and there was no hot water and the hot tub was not working, but Respondent did not send somebody to fix it until the next day. Complainant further states that Complainant was bitten by bed bugs, and Respondent denied there were bed bugs and refused to relocate Complainant or refund the money until an exterminator verified there were bed bugs. Complainant took pictures of bed bugs and waited for the exterminator but states that an exterminator never showed up.

Respondent states that Complainant reserved the room for a same day arrival, and, when the vehicle had difficulty reaching the cabin location, Complainant was given the option to either file a claim with the travel insurance company for reimbursement and check into a hotel or move to another available cabin. Respondent states that Complainant chose to move to another available cabin for no additional fee. Respondent states that two (2) representatives from the pest control company inspected the cabin and provided written documentation confirming there were no bed bugs. Respondent further states that no other guests have complained of bugs in that cabin since Complainant's stay. Respondent states that the company does their best to address and correct any issues guests are having quickly and efficiently, but Respondent did not find any validity to Complainant's claim of bed bugs. Respondent submitted a bed bug inspection report stating that there was no evidence of bed bugs found in the property, and no treatment was needed.

**Recommendation: Dismiss.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**21. 2014006961**

**Opened: 5/2/14**

**First License Obtained: 5/20/08**

**License Expiration: 5/19/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant signed a Buyer's Representation Agreement with Respondent (affiliate broker) but states that a copy was not provided. Complainant became unhappy with Respondent's representation for the sale of Complainant's home due to a delayed closing, and Complainant attempted to terminate the buyer's rep agreement. Complainant states that Respondent refused and sent a copy of the buyer's representation agreement, which included a termination date that Complainant states Complainant was unaware of and had not been explained and may have been altered. Complainant states that Complainant would drive around and find houses personally, and, when Complainant found a home Complainant wanted to put a contract on, Respondent was not present, and Complainant did not think Complainant still had to use Respondent because several months had passed.

Respondent responded stating that there were two (2) sets of original documents (the listing agreement and buyer's representation agreement) and each document was reviewed with Complainant, both original sets were signed, and Complainant retained a set of original copies. Respondent denies altering this document. Respondent submitted a copy of a lot reservation for purchase of a new home. Respondent states that it was requested that Respondent draft a contract for the new home purchase, but Respondent states that Complainant instead signed a contract for the same home drafted by the listing agent which included an agency disclosure that stated the listing agent was working as the transaction broker for Complainant's purchase. Respondent further states that seller (represented by another licensee) offered Respondent a referral fee for the property and forwarded a referral agreement to Complainant which was signed. There does not appear to be a violation of TREC's laws and/or rules by Respondent.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carries.**

**22. 2014006991**

**Opened: 4/30/14**

**First License Obtained: 2/23/00**

**License Expiration: 4/1/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint number 2014006961 (hereinafter "affiliate broker").

Respondent submitted a response stating that Respondent spoke with Complainant after the sale of Complainant's home, who requested to cancel the buyer's representation agreement. Respondent states that Respondent advised that the agreement needed to be mutually terminated, and, while speaking to the affiliate broker, Respondent learned that Complainant was upset that the closing had been delayed, and Complainant's spouse instructed the affiliate broker to deal directly with the spouse. Respondent states that affiliate broker did not wish to cancel the buyer's representation because affiliate broker had already worked showing Complainant homes. Respondent states that Complainant was on affiliate broker's automated email list and was notified of homes that came on the

market, which is how Complainant learned of the home under contract. Respondent states that Complainant wrote a contract on a home without the affiliate broker, and Complainant's spouse notified affiliate broker that a deposit was placed on a new home, so affiliate broker reminded them of the contract and re-forwarded it. Respondent states that Complainant's spouse requested that affiliate broker prepare an offer, but Complainant became upset and refused to work with affiliate broker. Respondent states that Respondent reviewed the transaction file, and documents do not appear to have been altered. Respondent states that affiliate broker would have explained the entire buyer's representation agreement instead of just one section. Respondent states that the builder decided to pay affiliate broker a referral fee since Complainant did not want the affiliate broker involved. Respondent states that Respondent received the referral agreement and presented it to affiliate broker. Respondent states that the referral agreement was discussed and signed, and Complainant is moving forward with the home purchase. Respondent states that Respondent has exercised all duties and obligations as principal broker and included emails to corroborate same.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Hills; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**23. 2014007061**

**Opened: 7/22/14**

**First License Obtained: 9/10/01**

**License Expiration: 8/31/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant is a licensee who states that Respondent (principal broker) is actively selling real estate despite the fact that the license for Respondent's firm had been expired for quite some time. According to TREC records, it appears that Respondent's firm license expired on or about August 24, 2011.

Respondent applied for re-licensure of the firm, and Respondent's firm again obtained an active license on or about June 18, 2014. Respondent submitted no response to the complaint.

The office of legal counsel followed-up with Complainant and received additional information, including a report from Centralized Showing Service, indicating that

Respondent showed a property which was listed by Complainant on or about March 2, 2014, while Respondent's firm license was expired. Complainant states that Respondent showed the property to a family member and requested a fee from Complainant, which Complainant did not pay because Respondent's firm license was not active. Complainant states that Respondent is now the tenant of the property. Complainant also submitted copies of MLS listings where Respondent is the listing agent, and the homes were listed (and several also closed) while Respondent's firm license was expired. Complainant also submitted MLS listings where Respondent was the sales agent, and closings occurred while Respondent's firm license was expired.

**Recommendation: Consent Order for \$1,500 for failing to have an active firm license and filing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Franks made a motion to authorize a Consent Order for \$2,000 for failing to have an active firm license and filing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Hills; unanimous vote; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order for \$2,000 for failing to have an active firm license and filing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**24. 2014007101**

**Opened: 5/2/14**

**First License Obtained: 8/15/08**

**License Expiration: 8/14/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

This is a TREC opened complaint based on materials received by the TREC office. Specifically, online advertisements indicate Respondent (principal broker) was advertising three (3) properties located in Tennessee for sale during a time period in

which Respondent's license was suspended by TREC for failure to maintain errors and omissions insurance.

Respondent submitted a response stating that Respondent received a letter from TREC, and Respondent spoke with Respondent's insurer in another state (Respondent is located in another state) and was informed that coverage was renewed and would continue. Respondent states that Respondent requested that the proper notification be sent to TREC and states that Respondent followed up and was assured that this was handled. Respondent states that it is likely that confusion arose because Respondent has E&O insurance in another state through that insurer, as well. Respondent states that Respondent would have never attempted to do business without proper coverage. With regard to two (2) advertised properties, Respondent states that one expired before suspension and the other closed before suspension and had not been removed. With regard to the third property, Respondent admits that the advertisement was up during the suspension period and sold in February 2014, but Respondent states that, had Respondent been aware of the suspension, Respondent would have immediately resolved the issue. Respondent apologized for the oversight and states that this will not happen again, and all Tennessee properties were removed from the website until the issue was resolved. Respondent states that Respondent has never been in noncompliance in Respondent's home state and Respondent would never wrongfully do business in Tennessee. It appears that Respondent promptly resolved the issue by obtaining valid E&O insurance and paying the substantial penalty fee.

**Recommendation: Letter of warning regarding T.C.A. § 62-13-112 and Rule 1260-01-16 regarding lapsed E&O insurance.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to send Letter of warning regarding T.C.A. § 62-13-112 and Rule 1260-01-16 regarding lapsed E&O insurance; seconded by Commissioner Blume; Commissioner Franks voted No; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**25. 2014007121**

**Opened: 5/6/14**

**First License Obtained: 5/29/97**

**License Expiration: 10/14/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**26. 2014007122**

**Opened: 5/6/14**

**First License Obtained:** 9/15/05  
**License Expiration:** 9/14/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

Complainant and spouse were unrepresented and were looking to purchase a home and found a property listed by Respondent 1 (principal broker) which they liked. Complainant states that Respondent 2 (affiliate broker) showed the home and stated that Complainant's current home needed to be put on the market before making an offer on the property. Complainant listed Complainant's home with another agent and signed an Exclusive Buyer Representation Agreement, Confirmation of Agency Status and Purchase and Sale Agreement with Respondent 2. Complainant provided an email from Respondent 2 stating "...If all this falls through on [property address] and you do not wish me to represent you further, this will end." Complainant states that sellers countered with a higher price, and sellers would not accept a sale of home contingency. Complainant states that they withdrew the offer. Complainant states that Respondent 1 then showed Complainant three (3) properties. Complainant states that a friend was selling their house, and Complainant went to see it without an agent present then informed Respondent 2 that they no longer needed representation, and Respondent 2 agreed to shred the agreement, and Complainant proceeded without representation. Complainant then contacted Respondent 2 to confirm that the buyer representation agreement was terminated and received a response stating that Respondent 2 did not have authority to do so, and the request was sent to Respondent 1, who denied terminating representation. Complainant states that the buyer representation agreement states that, "...If a fee is not offered or paid to Broker, as could occur, for example, in the purchase of an unlisted property, Client agrees to pay Broker a total of \$\_\_\_\_ or 0% compensation based on the total sale price..." and, if they purchase the friend's home, they would not owe Respondents according to the contract. Complainant states that Respondent 1, by refusing to sign a release, is intentionally trying to interfere in the purchase of the new home, and the buyer representation agreement was rightly terminated by Respondent 2's statements, and Respondent 2 was authorized to do so on the firm's behalf.

Respondent 1 responded stating that it was evident that Complainant was working with the firm due to continued conversations with the firm and additional requests to show properties even after the purchase of the first property fell through. Respondent 1 states that Complainant was in contact with Respondent 1 until they found the new home and then contacted Respondent 2 about no longer needing representation. Respondent 1 states that Respondent 2 contacted Respondent 1 when Complainant requested to end representation and states that the firm does not shred documents or contracts. Respondent 1 further states that the contract language regarding 0% compensation is referring to unlisted property, and Complainant is taking it out of context. Respondent 1 states that the firm represented Complainant diligently and to the best of their ability.

Respondent 2 responded stating that, upon showing Complainant the first property, Complainant stated that they needed to sell their home first, and Respondent 2 advised that they should put their home on the market if a purchase was going to include that contingency. Respondent 2 states that Respondent 2 told Complainant that, if Respondent 2's representation did not live up to their expectations, they could terminate the Buyer Representation Agreement. Respondent 2 also states that, once Complainant's home was under contract to sell, they contacted Respondent 2 to submit another offer to purchase the first property but ultimately decided not to go through with it. Respondent 2 states that Respondent 2 received a call from Complainant stating that they wished to purchase a home from a friend and did not need representation, and Respondent 2 stated that their agreement was over, though Respondent 2 wanted to warn them about buying a home without representation and did not say the agreement would be shredded. Respondent 2 states that Respondent 2 later found out what was going on and that the seller's agent had told Complainant to get a written release and proceeded to work with Complainant knowing they were under contract with Respondents' firm. It does not appear that there is a violation of TREC's laws and/or rules by Respondents.

**Recommendation: Dismiss.**

**ACTION: Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**27. 2014007241**

**Opened: 5/7/14**

**First License Obtained: 3/17/88**

**License Expiration: 5/20/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**28. 2014007261**

**Opened: 5/7/14**

**First License Obtained: 3/23/94**

**License Expiration: 4/15/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2014005971 – Closed \$250 CO (FTS)**

Complainants were sellers, and Respondent 1 (affiliate broker) represented a potential buyer. A complaint was opened against Respondent 2 (principal broker) on a potential failure to supervise issue. Complainants state that the Purchase and Sale Agreement was submitted and stated that \$500 in earnest money had already been collected stating, "Buyer has paid or will pay within [field left blank] days after the Binding Agreement Date to [sellers' agent's firm] located at [field left blank] an Earnest Money deposit of \$500 by check." Complainants state that they accepted the offer on the following day. Complainants state that Complainants' agent requested the earnest money check, but Respondent 1 called Complainants' agent later that day rescinding the offer. The agents disagreed whether there was a binding agreement, and Complainants' agent again requested that the earnest money be delivered. Complainants allege that buyer is in breach of contract, and the earnest money should be delivered. Complainants submitted a contract copy which is marked accepted and signed by seller, but there is no binding agreement date. A letter from the buyer stating that buyer wishes to rescind offer was sent via e-mail to Complainants through their agent a few days later. Copies of an earnest money disbursement form requesting earnest money to Complainants and a Notification stating that seller is terminating the agreement for failure to deliver earnest money and failure to deliver good funds were also submitted.

Respondents submitted a joint response to the complaint stating that Complainants did not in fact accept the contract but instead counteroffered by adding terms to the buyer's offer. Respondents state that Complainants' claim that the contract stated that earnest money had already been collected in the form of a check was not accurate. Respondents point out that the buyer presented an offer, the Complainants counter-offered on the following day, and Complainants filed their TREC complaint on the day after that. Respondents further state that the property was currently occupied by tenants, and there was uncertainty with the status of the lease which might create a problem with the occupancy date of the subject property due to when the lease ended. Respondents state that, due to this situation, the offer intentionally checked a box indicating that possession would be a different time than with delivery of warranty deed and payment of purchase price, but the blank indicating the date was purposely left blank in anticipation of the seller's counter offer proposal regarding the possession date and time for the buyer's consideration. Respondents state that Complainants' agent e-mailed the counter offer (which was claimed to have been an acceptance) which contained the additional term written on the line specifying possession date and time. Respondents state that the counteroffer with this possession date was not acceptable to the buyer, and the buyer rejected the seller's counter offer and considered the offer dead. Respondents further state that the buyer has obtained legal counsel pertaining to the matter. Respondents further state that Respondents understand and adhere to TREC's statutes and rules, and Respondent 2 is devoted full time to the management of licensees and provides supervision and daily training. Respondents submitted a copy of the offer, which appears to contain a blank possession date, and the copy signed by the seller does appear to have a date filled in on that blank.

**Recommendation: Dismiss.**

**ACTION: Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**29. 2014007601**

**Opened: 5/9/14**

**First License Obtained: 7/17/89**

**License Expiration: 7/2/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**30. 2014007602**

**Opened: 5/9/14**

**First License Obtained: 5/3/89**

**License Expiration: 8/30/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainants purchased a property and state that Respondent 1 (affiliate broker) fraudulently concealed known adverse material facts and building code violations. Respondent 2 is Respondent 1's principal broker. Complainants state that Respondent 1 was listed as owner, selling agent, and builder on the sales contract. Complainants state that the primary septic tank system failed within six (6) months of purchasing the new home, and investigations revealed violations of state and building codes that deemed the property uninhabitable with no use of water facilities and required purchase of another home. Copies of expert statements and testimony, third-party witness statements, and pictures were attached with the complaint.

Respondent 1 states that Respondent 1 does not contest that the septic system failed but states that it was completed properly and passed inspection. Respondent 1 states that the house is not a total loss, that the problem can be fixed, and that an expert's deposition corroborates same. Respondent 1 states that Respondent 1 has offered to make repairs according to the contract, but Respondent 1 has received numerous letters from Complainants and their attorneys instructing Respondent 1 not to attempt anything. Respondent attached documentation, including the Purchase and Sale Agreement, where

Respondent 1 signed as owner/agent, and special stipulations include that seller is to provide a one (1) year written builder warranty.

Respondent 2 responded through an attorney stating that the complaint stems from a lawsuit filed in civil court. Respondent 2 states that Complainants retained another licensee with Respondent 2's firm to help them find a home, and Complainants decided to purchase a new construction property owned by Respondent 1. Respondent 2 states that, shortly after Complainants moved in, there were problems with the septic tank but that expert testimony verifies that the problem should be fixable. Respondent 2 states that, after the expert deposition, parties agreed that Respondent 1 could make repairs, but Complainants changed their minds, hired a new attorney, and Respondent 1 was advised not to make repairs. Respondent 2 states that there is a builder warranty, that Respondent 2 and firm did not build the house or create the problem, and no allegations of misrepresentation have been made against Respondent 2 or the firm. Respondent 2 states that Respondent 2 had no knowledge of septic system problems prior to Complainants purchasing the home, and there were no defects/problems known that could have been disclosed.

Complainants state additionally that Respondent 1 did not disclose adverse material facts, and Complainants contend that a deposition from an expert reveals that Respondent 1 chose to ignore state regulations. Complainants state that they requested Respondent 1 to fix the problems in February 2013 and April 2013. Respondent 1 states additionally that Respondent 1 did nothing wrong, that it is not possible to know if a septic tank is working properly without someone living in the home, and that the septic tank was installed correctly to state specifications. Respondent 1 states that it is unclear if the problems arose from defects in installation or misuse by Complainants because Complainants refuse to allow Respondent 1 to inspect the tank.

Office of legal counsel confirmed that litigation in this matter is ongoing and Respondent 1 and Respondent 2's firm are parties to the lawsuit regarding the subject property. It is likely that further information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination regarding this matter.

**Recommendation: For each Respondent, Consent Order for litigation monitoring.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation for each Respondent, Consent Order for litigation monitoring; seconded by Commissioner Franks; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**31. 2014007681**

**Opened: 5/13/14**

**First License Obtained: 2/8/07**

**License Expiration: 2/7/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

This is an anonymous complaint against Respondent (affiliate broker) and the four (4) subsequent Respondents. The Complainant states that a real estate closing occurred, and the HUD Statement (a copy was provided) shows that a real estate firm was paid a commission. The Purchase and Sale Agreement (a copy was provided) was written on a contract with a letterhead for the firm referenced on the HUD. Respondent is affiliated with a referral firm which is not the same firm that received the commission and is listed on the contract letterhead. Complainant states that Respondent misrepresented that Respondent was an independent licensee with that firm. The last page of the contract includes Respondent's name as the "Independent Licensee" and the name of the firm where Respondent is not affiliated as the "Selling Company." Complainant also states that Complainant searched the other firm's website and noticed several licensees who are affiliated with the referral firm (including Respondent) listed as Realtors, and Complainant states that the site does not reference the referral firm at all, and the contact information incorrectly indicates that the licensees are affiliated with the other firm. Additionally, the printout provided states, above the heading for Respondent's picture and contact information, "Realtor Info," and Respondent is not a Realtor based on a check with the local association.

Respondent submitted a response stating that a couple was looking at the home across the street from Respondent's home, and Respondent approached them and identified himself as a licensee and offered to contact the listing agent on their behalf. When Respondent learned that they were unrepresented, Respondent showed the home and spoke with the couple about making an offer. Respondent states that Respondent contacted the company owner (who is also principal broker of the other real estate firm) and received the okay to proceed. Respondent states that his wife picked up a sales contract, and Respondent assisted the couple with writing an offer. Respondent states that Respondent should have put the referral firm on the contract instead of the other firm but believed this was an administrative issue. Respondent denies misleading anyone and states that Respondent never represented that Respondent was a Realtor. Respondent additionally states that Respondent is not aware of ever being included on the other firm's website or benefitting from it, and Respondent has another full-time job outside of real estate.

When examining the responses relating to the website issue, it appears that the consensus is that Respondent was not aware of Respondent's presence on the website. However,

Respondent's listing of himself as independent licensee with a company where Respondent is not affiliated appears to be a misrepresentation, as Respondent cannot hold two (2) licenses at once as referenced in § 62-13-309(e).

**Recommendation: Consent Order with civil penalty of \$500.00 for violations of T.C.A. §§ 62-13-312(b)(1)(14) and 62-13-309(e), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Alexander made a motion to authorize a Consent Order with civil penalty of \$1,000.00 for violations of T.C.A. §§ 62-13-312(b)(1)(14) and 62-13-309(e), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Hills; unanimous vote; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with civil penalty of \$1,000.00 for violations of T.C.A. §§ 62-13-312(b)(1)(14) and 62-13-309(e), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**32. 2014007691**

**Opened: 5/13/14**

**First License Obtained: 3/2/12**

**License Expiration: 3/1/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

The same complaint as the previous matter states that the anonymous Complainant searched the a firm's website and noticed several licensees who are affiliated with another referral firm (including Respondent – who is an affiliate broker) listed as Realtors, and Complainant states that the site does not reference the referral firm at all, and the contact information incorrectly indicates that the licensees are affiliated with the other firm. Additionally, the printout provided states, above the heading for Respondent's picture and contact information, "Realtor Info," and Respondent is not a Realtor based on a check with the local association.

Respondent submitted a response stating that Respondent was unaware of any presence on the firm website referenced since moving Respondent's license to the referral firm. Respondent states that Respondent has not benefitted from said presence nor has Respondent advertised in any other manner. Respondent states that Respondent's license

is current, but Respondent is not active in promotion or sales for the firm where Respondent's information was listed. When examining the responses relating to the website issue, it appears that the consensus is that Respondent was not aware of Respondent's presence on the website.

**Recommendation: Dismiss.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**33. 2014007701**

**Opened: 5/9/14**

**First License Obtained: 3/25/04**

**License Expiration: 9/16/14**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

The same complaint as the previous two (2) matters states that the anonymous Complainant searched the a firm's website and noticed several licensees who are affiliated with another referral firm (including Respondent – who is a broker) listed as Realtors, and Complainant states that the site does not reference the referral firm at all, and the contact information incorrectly indicates that the licensees are affiliated with the other firm. Additionally, the printout provided states, above the heading for Respondent's picture and contact information, "Realtor Info," and Respondent is not a Realtor based on a check with the local association.

Respondent submitted a response stating that Respondent put Respondent's license with the referral firm in 2013, and Respondent does not advertise property for sale or solicit any property to advertise for sale. Respondent states that Respondent was formerly a principal broker for a larger firm and is aware that all advertising is to be under the principal broker's supervision and include the firm name and telephone number. When examining the responses relating to the website issue, it appears that the consensus is that Respondent was not aware of Respondent's presence on the website.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's**

**recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**34. 2014007711**

**Opened: 5/13/14**

**First License Obtained: 9/14/79**

**License Expiration: 11/22/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

The same complaint as the previous three (3) matters states that a real estate closing occurred, and the HUD Statement shows that a real estate firm was paid a commission. The Purchase and Sale Agreement was written on a contract with a letterhead for the firm referenced on the HUD. Respondent is the principal broker of the firm. Complainant states that the affiliate broker Respondent of complaint 2014007681 (“affiliate broker” - affiliated with another referral firm) misrepresented that he was a licensee with that firm, and the contract included the affiliate broker’s name as the “Independent Licensee” and Respondent’s firm (where the affiliate broker is not affiliated) as the “Selling Company.” Complainant also states that Complainant searched Respondent’s firm website and noticed three (3) licensees (Respondents of the previous three (3) complaints) who are affiliated with another referral firm listed as Realtors, and Complainant states that the site does not reference the referral firm, and the contact information incorrectly indicates that the licensees are affiliated with Respondent’s firm. Additionally, the printout provided states, above the heading for the three (3) licensees’ photos and contact information, “Realtor Info,” and those licensees are not Realtors based on a check with the local association.

Respondent submitted a response stating that Respondent is the owner/broker of the real estate firm. Regarding the sale transaction, Respondent states that Respondent was on duty when the affiliate broker called requesting help. Respondent states that the principal broker for the referral firm was out, and Respondent gave the go ahead for the affiliate broker to write the offer. Respondent states that the referral firm’s principal broker was advised the following morning upon returning. Respondent states that it is unusual for referral agents to write offers, but Respondent did not feel that anyone was being misled. Respondent states that Respondent can see now where it should have been made clear with the correct firm name and firm number, and the contract should not have had Respondent’s firm heading nor should Respondent’s firm have been referenced elsewhere, and it should have referenced the referral firm. Respondent states that, regarding the website, Respondent contracted with a company for design, and it was never intended to promote the referral firm or any of its agents. Respondent states that,

when they were notified that some agents who were not with the firm were on the website, Respondent immediately went to work attempting to remove them, which took some time due to difficulties encountered. Respondent attached e-mails to this effect, and based on a check at review of this matter, none of the three (3) licensees referenced in the complaint were included on Respondent's firm website. Respondent states that all agents and brokers involved in the complaints were not aware of their presence on the website.

**Recommendation: Consent Order with civil penalty of \$1,000.00 for violations of T.C.A. § 62-13-312(b)(4) and (15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation of Consent Order with civil penalty of \$1,000.00 for violations of T.C.A. § 62-13-312(b)(4) and (15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order ; seconded by Commissioner DiChiara; Commissioner Collins voted No; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**35. 2014007731**

**Opened: 5/13/14**

**First License Obtained: 8/7/68**

**License Expiration: 3/30/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

The same complaint as the previous four (4) matters states that a real estate closing occurred, and the HUD Statement shows that a real estate firm was paid a commission. The Purchase and Sale Agreement was written on a contract with a letterhead for the firm referenced on the HUD. Complainant states that the affiliate broker Respondent of complaint 2014007681 ("affiliate broker") misrepresented that he was a licensee with that firm, and the contract included the affiliate broker's name as the "Independent Licensee" and the firm from the HUD and the contract letterhead as the "Selling Company." The affiliate broker is not affiliated with the firm referenced on the documents but is affiliated with another firm - a referral firm where Respondent is principal broker. Complainant also states that Complainant searched the other firm's website and noticed three (3) licensees who are affiliated with Respondent's referral firm listed as Realtors, and Complainant states that the contact information incorrectly indicates that the licensees are affiliated with another firm.

Respondent submitted a response stating that, on a day when Respondent was not present in the office, the affiliate broker called for permission to write a contract, and the company owner (the previous Respondent – who is also a principal broker) stepped in and assisted. The following morning, Respondent states that Respondent was apprised of this, and Respondent states that Respondent was not aware of any issues with the transaction until the complaints were filed. Respondent states that the affiliate broker's use of the other firm's contract and writing the other firm's name on the contract instead of Respondent's firm was a mistake and should have been corrected. Respondent states that Respondent was not aware of the advertising issue on the other firm's website. When examining the responses relating to the website issue, it appears that the consensus is that Respondent was not aware of the website. However, it appears that there is a supervision issue relating to the affiliate broker's misuse of firm names on the contract.

**Recommendation: Consent Order with civil penalty of \$500.00 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation of Consent Order with civil penalty of \$1,000.00 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Blume; unanimous voted; motion carries.**

**DECISION: The Commission voted to authorize a Consent Order with civil penalty of \$1,000.00 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**36. 2014009381  
Opened: 5/23/14  
First License Obtained: 2/10/97  
License Expiration: 10/25/14  
E&O Expiration: 1/1/15  
Type of License: Broker  
History: 2014000951 – Formal charges authorized**

This is a TREC opened complaint based on Respondent's advertising materials (Respondent is a broker) received in the TREC office. Specifically, the print

advertisement states that Respondent will sell a home without a commission if the owner uses Respondent to buy his or her next home.

Respondent submitted a response stating that, for several years, Respondent has been offering to individuals wanting to buy a home but also having a home to sell an opportunity to save the listing portion of the real estate commission. Respondent states that Respondent does not charge any fees for listing a home if someone is buying and will promise to purchase the next home with Respondent's assistance. Respondent states that Respondent explains that they will pay the buyer's agent the three percent (3%), but Respondent is not paid for the listing. Respondent states that the advertisement explains this as well as all of Respondent's other advertising materials, and there is nothing false, misleading or deceptive about it. Respondent states that Respondent has sold numerous homes and not charged any fees for doing so. Respondent states that Respondent attempts to make Respondent's business model very clear, and Respondent has assisted many distressed homeowners by helping them avoid short sales by lowering their costs to sell. It does not appear that there is a violation by Respondent.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**37. 2014009421**

**Opened: 5/23/14**

**First License Obtained: 10/19/01**

**License Expiration: 4/13/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2013017311 – Closed \$500 CO (timely disburse EM)**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the advertisement of the previous Respondent broker in complaint 2014009381 ("broker").

Respondent submitted a response stating that the broker moved to Respondent's firm earlier this year and was welcome because the broker has consumers' best interest in mind in this advertising campaign. Respondent states that Respondent has spoken with the broker numerous times about real estate and advertising, and Respondent has monitored advertising. Respondent states that it is Respondent's understanding that TREC is in place to protect the consumer, and Respondent does not feel that this ad

harms the consumer. Respondent states that Respondent took the ad to five (5) different consumers and asked them to describe what was being advertised, and Respondent included the consumers' written responses. Respondent does not believe that the ad is misleading or deceptive. Respondent states that Respondent understands that some agents have advertised just to make phones ring but states that this is not the case with this ad and this broker. Respondent states that there is no fine print or bait and switch. Respondent attached documentation, including positive feedback forms from clients who utilized the program and MLS listings and HUD statements from multiple properties showing that the broker received no commission. It does not appear that there is a violation by Respondent.

**Recommendation: Dismiss.**

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**38. 2014013481**

**Opened: 6/24/14**

**First License Obtained: 9/21/06**

**License Expiration: 9/20/14**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**39. 2014013482**

**Opened: 6/24/14**

**First License Obtained: 5/17/89**

**License Expiration: 9/17/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 201003497 – Closed \$500 CO (unlic ppty mgmt. firm)**

**40. 2014013483**

**Opened: 6/24/14**

**First License Obtained: 5/25/83**

**License Expiration: 9/20/14**

**E&O Expiration: Uninsured**

**Type of License: Firm**

**History: No Prior Disciplinary Action**

**41. 2014013484**  
**Opened: 6/24/14**  
**First License Obtained: 2/10/95**  
**License Expiration: 12/12/15**  
**E&O Expiration: 1/1/15**  
**Type of License: Affiliate Broker**  
**History: No Prior Disciplinary Action**

**42. 2014013485**  
**Opened: 6/24/14**  
**History: No Prior Disciplinary Action - Unlicensed**

Complaint opened by staff based on an advertisement submitted anonymously. The ad references a cash back program through utilizing a relocation services program for certain individuals. The complaint references contacting Respondents 1 and 4 (affiliate brokers) for additional information. Respondent 2 is their principal broker, and Respondent 3 is the firm. Respondent 5 is an unlicensed individual whose contact information as part of the relocation department is listed.

Respondent 2 submitted a response on behalf of Respondents stating that the program flyer provides general details regarding programs offered for certain individuals who are part of certain groups which provide those individuals with benefits. Respondent 2 states that the company helps those members in the home sale and purchase aspects. Respondent 2 states that the program offers a “cash back” program which is paid directly from the group’s administrator – not the real estate firm or an agent. Further, Respondent 2 points out that the ad states that, in Tennessee, the cash back bonus is paid in the form of a gift card. Finally, Respondent 2 states that Respondent 5 is the relocation manager of that division, and Respondent 5 does not sell or list property, negotiate contracts, or counsel buyers/sellers about real estate. It does not appear that there is a violation by Respondents.

**Recommendation: Dismiss.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**43. 2014013631**  
**Opened: 7/18/14**  
**History: No Prior Disciplinary Action - Unlicensed**

Complainant alleges that Respondent (unlicensed individual) is renting mobile homes, and Respondent is not the owner and does not have a license. Complainant states that Respondent negotiates the deposit and collects rent. Respondent did not submit a response to the complaint, and the complaint which was sent to Respondent was returned "unclaimed." There does not appear to be documentation showing that Respondent is performing the activities alleged. Furthermore, it does not appear to legal counsel that the definition of "broker" within T.C.A. § 62-13-102 includes mobile homes.

**Recommendation: Dismiss.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**44. 2014013791**

**Opened: 7/11/14**

**First License Obtained: 4/10/01**

**License Expiration: 11/6/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant (a licensee) filed this complaint based on information from a former client. Complainant states that Respondent (principal broker) arrived to show Complainant's client's property per an appointment through the showing system, and the client observed from next door and saw Respondent arrive alone, put on gloves, and enter the home. The client apparently contacted police regarding an investigation of missing property and computer hacking. Complainant had no other knowledge than what was told to Complainant by the client, and there was no other information provided. The homeowner client did not wish to discuss the matter with staff, did not want a complaint filed, and only wanted police involved in the investigation.

Respondent submitted a response stating that Respondent was previewing the property for a client, who had hired Respondent because Respondent is also a general contractor. Prior to the preview, the area had experienced hail storms, and Respondent states that Respondent was doing a hail damage check. Respondent states that Respondent put on gloves as usual and then observed that the lowest gutter was too high to reach, and the homeowner apparently saw this and drew wild conclusions. Respondent states that the

police report showed that nothing was missing from the home and mentions nothing of computer hacking. Respondent states that there was no wrongdoing and no violation.

**Recommendation: Dismiss.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**45. 2014014251**

**Opened: 6/19/14**

**First License Obtained: 2/14/12**

**License Expiration: 2/13/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: 2013025671 – Formal Charges Authorized**

This complaint was opened by staff based on information filed anonymously which consisted of a screen shot from a sheriff's office warrant search website. The screen shot indicated that Respondent (affiliate broker) had warrants for two criminal charges.

Legal counsel recommends dismissal of this complaint. In a previous complaint against this same Respondent, as part of the complaint allegations, that Complainant had already provided information indicating these same criminal charges. At that time, the office of legal counsel researched the issue and found that the charges had been dismissed. Therefore, this appears to be not only duplicative to information already received by the Commission as part of a previous complaint, but the charges were also dismissed.

**Recommendation: Dismiss.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**46. 2014014781**

**Opened: 7/2/14**

**History: No Prior Disciplinary Action - Unlicensed**

TREC opened complaint based on information received by staff from Respondent's (unlicensed company) website. Respondent's website printout appeared to advertise a home located in Tennessee for absolute auction. It appears that Respondent obtained a license as an auction firm, but did not have licensure with TREC.

Respondent submitted a response through its CEO stating that Respondent performs no brokerage activities or work which requires real estate licensure, and Respondent works merely as a marketing arm of the seller and broker and works solely under their direction. Respondent provided the names and license numbers of a real estate firm and real estate licensee who Respondent states are performing all licensed activity work. When it came to Respondent's attention that the person auctioning real property must be licensed as both an auctioneer or an apprentice auctioneer and a broker or affiliate broker, Respondent contacted all advertisers to immediately cease promotion of the property. Respondent states that the auction has been cancelled, and Respondent will no longer promote the property or auction until Respondent is in compliance with Tennessee law.

**Recommendation: Letter of warning regarding definition of broker (T.C.A. § 62-13-102(4)(A) and (B)) and §§ 62-13-103 and 62-13-301.**

**ACTION: Commissioner Alexander made a motion to accept legal counsel's recommendation to send letter of warning regarding definition of broker (T.C.A. § 62-13-102(4)(A) and (B)) and §§ 62-13-103 and 62-13-301; seconded by Commissioner DiChiara; unanimous vote; motion carries**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**CONSENT ORDER LOG**

**Ms. Cropp presented the Consent Order Log and the Commissioners had no questions concerning it.**

**There being no further business,**

**Chairman Griess adjourned the meeting on Wednesday, August 6, 2014 at 4:43p.m.**

